

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8902 of 1995

WITH

CIVIL APPLICATION NO. 4090 OF 1996.

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

MAKARPURA KAMDAR KARMACHARI UNION

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA for Petitioner

MR.V.B.GARANIA for Respondent Nos. 1 and 2.

MR.K.D.GANDHI for Respondent No.3.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/07/96

ORAL JUDGEMENT

This Special Civil Application has been filed by the union which is not recognised in respondent No.3 Company. The order dated 18.7.1995 passed by the Assistant Labour Commissioner, Vadodara as Conciliation Officer is under challenge. On 2.9.1994 the respondent company notified the voluntary retirement scheme. The

petitioner union felt that through this scheme the employees were indirectly sought to be retrenched. The petitioner union preferred Special Civil Application No. 599 of 1994 challenging the aforesaid scheme of voluntary retirement but this Special Civil Application was withdrawn on 1.2.1995 by saying that the union would seek the redressal of this grievance at the level of the authority under the Industrial Disputes Act. Accordingly the petitioner union moved an application dated 10.2.1995 before the Assistant Labour Commissioner, Vadodara. The Assistant Labour Commissioner issued notice to the otherside and has thereafter passed an order dated 18.7.1995 which is impugned in this petition. The case with which the petitioner union came to this Court is that the Assistant Labour Commissioner was only acting as Conciliation Officer and he had no authority to reject the request for making reference. An affidavit-in-reply dated 25.1.1996 has been filed on behalf of respondent No.3. The case of respondent No.3 is that the petitioner union does not represent majority of the employees and it is not a recognised union. The recognised union has not taken any exception to the scheme of voluntary retirement and all the employees numbering 350 have accepted the scheme of voluntary retirement and have already taken benefit of the scheme of voluntary retirement. According to respondent No.3 the petitioner union is simply using this litigation as a pressure technique upon the respondent company and the scheme of voluntary retirement which has found favour with the employees in general as also recognised union is being challenged by the present petitioner union through this petition. It was also pointed out that while passing the order dated 18.7.1995 the Assistant Labour Commissioner has only said that it is not a matter for conciliation because the scheme was for voluntary retirement and the same has been accepted by the employees and therefore all that he has said while passing the order dated 18.7.1995 is that he does not find it to be a fit case for any conciliation.

I have heard the learned counsel and I have also gone through the order dated 18.7.1995 which is under challenge in this petition. Whether the petitioner union was a recognised union or not once the notice is issued to the otherside by the Assistant Labour Commissioner, Vadodara acting as Conciliation Officer and after notice to the otherside if he had come to the conclusion that it was not a matter for conciliation because the voluntary retirement scheme was acceptable and the present petitioner union was only creating illusory dispute even if for any extraneous reason and for that reason he was justified to pass an order dated 18.7.1995 but the

Assistant Labour Commissioner ought to have sent the matter to the Appropriate Government rather than closing the chapter at that stage itself. I find some force in the argument of Mr.Gandhi that the Assistant Labour Commissioner has not passed any order rejecting the reference and this argument is also supported by Mr.Garania appearing for respondent Nos. 1 and 2. In this view of the matter, I find that the order dated 18.7.1995 which is challenged in this petition by itself may be treated as failure report and concerned Assistant Labour Commissioner, Vadodara may send this document dated 18.7.1995 as a failure report to the Appropriate Government.

The Appropriate Government may consider the facts in entirety including the facts with regard to the scheme of voluntary retirement way back in February, 1994 and that the scheme of voluntary retirement was accepted by more than 350 employees and after considering the entire relevant record and facts and circumstances of the case, if the Appropriate Government comes to the conclusion that genuine dispute still exists it may decide the question of making reference accordingly and in case the Appropriate Government comes to the conclusion that the present petitioner union which is not recognised union is only trying to create illusory dispute the Appropriate Government may pass the appropriate orders on that basis in accordance with law.

With the observation as aforesaid this Special Civil Application is disposed of and the Rule is hereby discharged. No order as to costs.

Civil Application No. 4090 of 1996.

Since the main matter itself has been decided no orders are necessary to be passed in this Civil Application, the same also stands disposed of accordingly.
